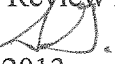


Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
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David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, Senior Programmer
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin 
DATE: November 5, 2013
RE: Appeal of zoning permit 14-0044CA; 500 South Prospect Street

At its deliberative meeting on September 30, 2013, the DRB voted to reopen the public hearing on this appeal to allow testimony from additional interested parties. The staff report remains unchanged. Additional materials provided by the appellant are attached.

To the Design Review Board:

Thanks your for opening the hearing for additional testimony. Below are the points I attempted to make the other evening.

DEPARTMENT OF
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1. Mr. Collin's assertion that they must move the fence 10 feet to the south in order to comply with the court order is untrue; he well knows that we could stipulate to an agreement the court would approve. They have many options that do not necessitate moving the fence. Because it does not intend to plant where the fence is currently located, UVM could plant the treess where it intends and keep the fence in place. If it desired, UVM could attempt to work out a mutually agreeable solution if it actually found it a problem to comply with the court order. It has made no attempts to do so. It could move the fence 4 feet to the south to provide room for more trees on the north side without the need to remove other vegetation. It could restore the un-permitted parking spaces and plant the trees in this location. As long as it did not remove existing vegetation, it could plant the trees where it plans to move the fence. Mr. Collins's claim that UVM is trying to be a good neighbor by moving the fence is simply insulting. It has chosen the most intrusive means possible for complying with the court order. The fact that UVM wishes to remove the hedge that we planted illustrates that they have no desire to find a solution that would actually mitigate the intrusion of Redstone Apartments on our home and family but rather find a way to inflict additional intrusion.
2. Mr. Collins assertion that Judge Crawford found moving the fence reasonable ignores the limited scope of the case and judge's order. Mr. Collins failed to inform you that Judge Crawford did not adjudicate the zoning violations that would effect the placement of the fence. He did not consider safety, trash, stormwater, or snow plowing. He simply reviewed if UVM had complied with Judge Bryan's original order to plant a hedge. He found that they did not (Exhibit 1). It is bewildering to me that UVM could spend so much of their and our time, money, and energy fighting against complying with their promises, the state and municipal conditions of approval, Judge Bryans' order, and now Judge Crawford's order.
3. Bryan's order came as no surprise since Linda Seavey who stated that there was to be a cedar hedge to screen the parking lot from the neighbors in her Act 250 application (Exhibit 27).
4. Mr. Williams and Mr. Collin's assertion that the fence must be moved in order to plant the additional trees is unfounded. They could much more easily and at less cost plant and/or relocate their trees in their chosen location without moving the fence.
5. We heard testimony that the road salt and snow plow was harming the fence and trees. The fence has been in that location since 1990 and posed no problem for the plow or salt until July 2013. (While we think it is an unnecessary waste of time and money, we do not have a problem if UVM decides to relocate only the trees). Regardless, the snow management plan calls for UVM to push the snow toward the catch basins or truck it away. When UVM plows the snow over the recently installed berm, the melting water does not enter the catch basins but instead floods into our yard, killing our trees, soaking our basement, flooding our yard. Additionally using salt on the driveway is a violation of their permit conditions. Moving the fence will only enable UVM to more easily violate their snow management plan. The fence should remain where it is if only to help prevent the snow plow from pushing snow over the berm and into our yard. (Exhibit 2)
6. We heard from Chief Toumey that moving the fence will create more open space. If they are

creating more open space, they are removing additional vegetation in violation of the permit conditions. UVM was to keep the existing vegetation and add additional vegetation. Moving the fence without also removing the vegetation creates no net increase in open space. It does however, place the trees behind the parking lot lights and contiguous with the parking lot itself. Separating the the trees from the parking lot with the fence was recommended by the police chiefs in 1990 and keeping it in its current location is the safer decision to today. (Exhibit 3)

7. The placement of the trees that Redstone planted in 2011 per our agreement was solely their decision. It makes no sense to plant trees to the north of the fence, shielding them from southern exposure, but this, despite our suggestion otherwise, is how they decided to plant the trees. The fence should be to the north of the trees so allow them better light. Mr Williams assertion that the trees would do better if moved is incorrect as UVM plans to keep the trees north of the fence. Again, UVM could simply plant the trees in their desired location and keep the fence where it is. The trees that Mr. Williams planted are not thriving, largely because he purchased sickly trees to begin with, but also because they are starved for sunlight. Exhibit 4 is a picture of the trees June 4, 2011 soon after they were planted, you'll see the soaker hose. Exhibit 5 is a picture of the trees in November of 2011. Exhibit 6 was taken just a few days ago. Please note that Exhibit 6 appears green because of the vegetation above the fence line, which UVM plans to remove, and the saplings amidst the cedars. If UVM's plan is approved much of the vegetation you see above the fence line will be removed to make room for their cedar trees.
8. The hedge on South Prospect Street, and the Burlington Country Club woods south of Redstone Apartments and east of our house are attractive nuisances. They attract students to drink, hang out, and party. Providing students access to the woods and hedge along our boundary will result in such behavior at our property line. The fence needs to separate the students from the woods, not allow them access to the woods. Redstone Apartments has no Residential Assistants so it has no one in a student supervisory role at the Apartments in the evening. UVM Police do not enforce UVM policy, only municipal and state laws. Exhibit 7 is picture of a hut students built in the woods to our east. Exhibit 8 shows some of the trash around the hut. Exhibit 9 shows the entrance to the hut on BCC property through opening in the Redstone Apartments fence. Exhibit 10 shows the inside of the hedge on South Prospect Street where students routinely hang out and drink, and even bring dorm chairs. This is the fate of the vegetation in the buffer zone should the fence be relocated to the south.
9. Mr. Gustin is incorrect to assert that UVM is seeking to move the fence "3' or 4' to the south." They are seeking to move it 10' to the south, and two feet away from our property line which is 12 feet away. This is too close to our home. (Exhibit 11 and UVM's application)
10. Students throw trash over the fence continually. We and our tenants pick up this trash because UVM does not. The trash is usually soda or beer bottles, and junk food wrappers. It has also included skis, condoms, umbrellas, plastic dining trays, car parts, and, disturbingly, recently a hypodermic needle. On occasion, despite the 12' buffer, trash still sometimes is thrown into our yard. If the bottles make it that far they sometimes break. When Harriet Adams was still alive, the trash thrown into her yard for a period of time included chicken bones, which were dangerous for her dogs. She needed to check the yard in the morning before letting her dog out. I have dozens of pictures of the trash but have only included a few. Exhibit 12 is a small sample of trash in the buffer zone. Exhibit 13 is a bag of trash I collected last summer—I could fill another bag now if I collected it. Exhibit 14 is the hypodermic needle currently in the buffer zone.

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UVM did have a dumpster in the parking lot but despite this students threw trash over the fence.

11. Trash is not the only problem, Redstone Apartments also generates much noise and light. The project is a 230 bed student housing project with 136 permitted and 15 additional un-permitted parking spaces. Just routine student activity such as getting in and out of their cars late at night is intrusive. Student activity should not be allowed to move 12' to the south.
12. Any stormwater problem UVM is blaming the poor health of the trees on is a problem they themselves created. Mr Gustin suggests that the "existing drainage conditions and stormwater infrastructure" are adequate and properly functioning. This is incorrect. UVM has allowed the swale designed to direct stormwater into the catch basins to fill in, and allowed the catch basins to become covered up with vegetation. This directed all of the storm water into our yard. We needed to install a storm pond to help alleviate this problem. Only this past year did Redstone install a berm to direct water from the parking lot into the catch basins. This berm will not last if UVM continues to plow snow toward the south. If UVM places the fence in its proposed location, it will remove vegetation planted to help mitigate the storm water problem at the property line. Moreover, planting the trees in the proposed location will necessitate filling in the storm pond created to help mitigate the stormwater run-off problem. Many documents in the zoning file for this project indicate that there has been a stormwater problem at the south-western edge of Redstone Apartments since its inception. Exhibit 15 is a letter in which Harriet Adams expresses concern about the problem. Exhibit 16 is a picture of a Redstone Apartments catch basin from September 2011 demonstrating that the catch basins were not maintained. This condition continued until recently. I am not including a picture of the second catch basin from this time because, because, since it was entirely covered, you cannot identify it in the picture! Exhibit 17 is the second catch basin on August 20, 2013. Please note how deep in the ground it is recessed. It was entirely covered by about 6" of dirt and grass. While UVM has remedied the catch basins, they did so only recently. Until they cleaned the catch basins and installed the berm, water ran across the parking lot over across the trees Redstone planted and into our yard. If you review the Krebs and Lansing storm water inspection reports, you'll note that in last year's report the engineers make it a point to write that Redstone Apartments is not (and never was) a part of their inspection.
13. Moving the fence and relocating the 40 trees and planting additional 40 trees will necessitate the removal of much of the existing vegetation at and around the proposed location. The property line runs through the existing woods and hedge trees we planted. Mr. Williams also stated that he plans to remove the hedge trees we planted on the UVM property. The result of their plan will be a net loss of vegetation. Exhibits 18-23 attempt to show where the fence will go. The pink survey markers were placed by UVM the other day and mark the property line. The fence will do 2-feet back from these stakes. Please note the full cedar hedges on this side. These trees we planted at our expense to help screen the Apartments. We heard testimony at the hearing that these plants UVM intends to remove in order to plant trees such as those in Exhibit 4. I encourage you to stop at the property to really see where this fence will go and how it will impact existing vegetation.
14. UVM made promises to an 82 year old Harriet Adams and her family, and to the Burlington Planning Commission that it would take some reasonable steps to help mitigate the nuisance of Redstone Apartments on Harriet Adams. Other than installing the fence, they did not keep those promises. The light they promised to move further away from the house now sits closer than the plat allows, they did not install additional vegetative screening or even maintain the existing screening. (Exhibit 24)

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15. In deposition, Linda Seavey answered the question if the trees Redstone planted "give an established feel to the project" by stating: "I think it's [the question] a little irrelevant, because you're reading from a permit condition that wasn't this installation that you requested, so I think it's difficult to say. I think they probably will, when they grow, but – *and you have a fence there, which is a different situation, which is much more buffer than a hedge would be*" (emphasis added) (Exhibit 25, page 2).

UVM is well aware of the value of the fence, but it is now seeking to move this buffer simply out of spite. Allowing the student 10' closer to our home will exacerbate an already bad problem with student behavior affecting our sleep and enjoyment of our home. Moving the fence will remove any buffer it offers.

16. In an email on June 27, 2012 Mr. Collins wrote that "UVM would agree to a landscape buffer agreement to maintain the [additional] plantings which would be on UVM property, and the landscape buffer would remain in effect during your/your wife's ownership of the property....UVM would agree to leave the existing fence north of your property line in place pursuant to an annual license that could be terminated by UVM on 90 days prior written warning" (Exhibit 26). Please note that Mr. Collins's objection to using this email and his belief that the VT Rules of Evidence apply to instances outside the courtroom is incorrect. He is also incorrect in asserting that a settlement offer in itself is confidential.

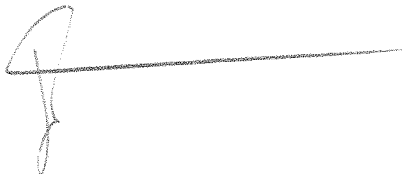
The fence location became a problem for UVM not because they needed to comply with a court order, not because of plowing and salting problems, and not because the trees were not thriving, but because in early July, I appealed the DRB decision not to place any limits on evening use of the Virtue Field Stadium. UVM then revoked their offer (above) and went to court. Their desire to move the fence is motivated by retribution. Again, UVM applied for the permit the day following the environmental court decision on Virtue Field, not after Judge Crawford's decision in March. If they could plant with the fence in place on June 27, they can do so now.

17. Judge Crawford's decision was in March, UVM applied to move the fence in July. They applied for their permit not a day or a week or a month after Crawford's order but on July 9th—one day after Judge Walsh announced his decision on our appeal of the Virtue Field DRB decision. This is not about the health of the trees or of UVM trying to be a good neighbor, but of putting up a big middle-finger 12' from our home.

Again, since the pictures don't capture everything, I'd ask that you stop by and take a look at the fence, and the property on both sides of the fence. Feel free to enter our back yard, which you can do through the gate on the north of our driveway. Moving the fence will exacerbate an already bad problem: it will entail removing trees and shrubs that are screening the Apartments, it will move the students and their late-night conversations, and trash and other noise, (and on occasion urine and vomit) 10' closer to our house.

Thanks.

Pike Porter



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OCT 25 2013

DEPARTMENT OF
PLANNING & ZONING

Scott Gustin

From: pikeporter@gmail.com on behalf of pike porter <pike@castleporter.com>
Sent: Wednesday, September 18, 2013 12:22 AM
To: Scott Gustin
Subject: Re: 500 South Prospect St.
Attachments: DRB Letter with Exhibits.zip

Scott,

Please pass along these documents to the DRB commissioners and add them to the file.

Thanks.

Pike

On Wed, Sep 11, 2013 at 9:16 AM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:

Pike,

The DRB report for your 500 South Prospect Street appeal is attached.

Scott

Scott Gustin, AICP, CFM

Senior Planner

Department of Planning & Zoning

149 Church Street

Burlington, VT 05401

Phone: [\(802\) 865-7189](tel:(802)865-7189)

Fax: [\(802\) 865-7195](tel:(802)865-7195)

To the Design Review Board:

My apologies for taking so much of your time this evening. However, the plan to move the fence is an assault on my family's peaceable enjoyment of our home. I don't believe cutting of public comment was necessary or appropriate since there were others who planned to speak, including my wife who has known both properties her entire life, and our tenant who has been picking up trash for years and planned to discuss the amount of trash he has picked up both when there was or was not a dumpster at the parking lot. Below are the points I attempted to make this evening.

1. Mr. Collin's assertion that they must move the fence to comply with the court order is untrue; he well knows that we could stipulate to an agreement the court would approve. If it desired, UVM could attempt to work out a mutually agreeable solution if it actually found it a problem to comply with the court order. It has made no attempts to do so. Mr. Collins's claim that UVM is trying to be a good neighbor by moving the fence is simply insulting.
2. Mr. Collins assertion that Judge Crawford found moving the fence reasonable is faulty because Mr. Collins failed to inform you that Judge Crawford did not adjudicate the zoning violations that would effect the placement of the fence. He did not consider safety, trash, stormwater, or snow plowing. He simply reviewed if UVM had complied with Judge Bryan's original order to plant a hedge. He found that they did not (Exhibit 1). Bryan's order came as no surprise since Linda Seavey who stated that there was to be a cedar hedge to screen the parking lot from the neighbors in her Act 250 application (Exhibit 27).
3. Mr Williams and Mr. Collin's assertion that the fence must be moved in order to plant the additional trees is unfounded. They could much more easily and at less cost plant and/or relocate their trees in their chosen location without moving the fence.
4. We heard testimony that the road salt and snow plow was harming the fence and trees. The fence has been in that location since 1990 and posed no problem for the plow or salt until July 2013. (While we think it is an unnecessary waste of time and money, we do not have a problem if UVM decides to relocate only the trees). Regardless, the snow management plan calls for UVM to push the snow toward the catch basins or truck it away. When UVM plows the snow over the recently installed berm, the melting water does not enter the catch basins but instead floods into our yard, killing our trees, soaking our basement, flooding our yard. Additionally using salt on the driveway is a violation of their permit conditions. Moving the fence will only enable UVM to more easily violate their snow management plan. It should remain where it is if only to help prevent the snow plow from pushing snow over the berm and into our yard. (Exhibit 2)
5. We heard from Chief Toumey that moving the fence will create more open space. If they are creating more open space, they are removing additional vegetation in violation of the permit conditions. UVM was to keep the existing vegetation and add additional vegetation. Moving the fence without also removing the vegetation creates no net increase in open space. It does however, place the trees behind the parking lot lights and contiguous with the parking lot itself. Separating the the trees from the parking lot with the fence was recommended by the police chiefs in 1990 and keeping it in its current location is the safer decision to today. (Exhibit 3)
6. The placement of the trees that Redstone planted in 2011 per our agreement was solely their decision. It makes no sense to plant trees to the north of the fence, shielding them from southern

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7. The hedge on South Prospect Street, and the Burlington Country Club woods south of Redstone Apartments and east of our house are attractive nuisances. They attract students to drink, hang out, and party. Providing students access to the woods and hedge along our boundary will result in such behavior at our property line. The fence needs to separate the students from the woods, not allow them access to the woods. Redstone Apartments has no Residential Assistants so it has no one in a student supervisory role at the Apartments in the evening. UVM Police do not enforce UVM policy, only municipal and state laws. Exhibit 7 is picture of a hut students built in the woods to our east. Exhibit 8 shows some of the trash around the hut. Exhibit 9 shows the entrance to the hut on BCC property through opening in the Redstone Apartments fence. Exhibit 10 shows the inside of the hedge on South Prospect Street where students routinely hang out and drink, and even bring dorm chairs. This is the fate of the vegetation in the buffer zone should the fence be relocated to the south.

8. Mr. Gustin is incorrect to assert that UVM is seeking to move the fence "3' or 4' to the south." They are seeking to move it 10' to the south, and two feet away from our property line which is 12 feet away. (Exhibit 11 and UVM's application)

9. Students throw trash over the fence continually. We and our tenants pick up this trash because UVM does not. The trash is usually soda or beer bottles, and junk food wrappers. It has also included skis, condoms, umbrellas, plastic dining trays, car parts, and, disturbingly, recently a hypodermic needle. On occasion, despite the 12' buffer, trash still sometimes is thrown into our yard. If the bottles make it that far they sometimes break. When Harriet Adams was still alive, the trash thrown into her yard for a period of time included chicken bones, which were dangerous for her dogs. She needed to check the yard in the morning before letting her dog out. I have dozens of pictures of the trash but have only included a few. Exhibit 12 is a small sample of trash in the buffer zone. Exhibit 13 is a bag of trash I collected last summer—I could fill another bag now if I collected it. Exhibit 14 is the hypodermic needle currently in the buffer zone.

UVM did have a dumpster in the parking lot but despite this students threw trash over the fence.

10. Mr Gustin suggests that the "existing drainage conditions and stormwater infrastructure" are adequate and properly functioning. This is incorrect. UVM has allowed the swale designed to direct stormwater into the catch basins to fill in, and allowed the catch basins to become covered up with vegetation. This directed all of the storm water into our yard. We needed to install a storm pond to help alleviate this problem. Only this past year did Redstone install a berm to direct water from the parking lot into the catch basins. This berm will not last if UVM continues to plow snow toward the south. If UVM places the fence in its proposed location, it will remove vegetation planted to help mitigate the storm water problem at the property line. Moreover, planting the trees in the proposed location will necessitate filling in the storm pond created to help mitigate the stormwater run-off problem. Many

documents in the zoning file for this project indicate that there has been a stormwater problem at the south-western edge of Redstone Apartments since its inception. Exhibit 15 is a letter in which Harriet Adams expresses concern about the problem. Exhibit 16 is a picture of a Redstone Apartments catch basin from September 2011 demonstrating that the catch basins were not maintained. This condition continued until recently. I am not including a picture of the second catch basin from this time because, because, since it was entirely covered, you cannot identify it in the picture! Exhibit 17 is the second catch basin on August 20, 2013. Please note how deep in the ground it is recessed. It was entirely covered by about 6" of dirt and grass. While UVM has remedied the catch basins, they did so only recently. Until they cleaned the catch basins and installed the berm, water ran across the parking lot over across the trees Redstone planted and into our yard. If you review the Krebs and Lansing storm water inspection reports, you'll note that in last year's report the engineers make it a point to write that Redstone Apartments is not a part of their inspection. It never was. Any stormwater problem UVM is blaming the poor health of the trees on is a problem they themselves created.

11. Moving the fence and relocating the 40 trees and planting additional 40 trees will necessitate the removal of much of the existing vegetation at and around the proposed location. The property line runs through the existing woods and hedge trees we planted. Mr. Williams also stated that he plans to remove the hedge trees we planted on the UVM property. The result of their plan will be a net loss of vegetation. Exhibits 18-23 attempt to show where the fence will go. The pink survey markers were placed by UVM the other day and mark the property line. The fence will do 2-feet back from these stakes. Please note the full cedar hedges on this side. These trees we planted at our expense to help screen the Apartments. We heard testimony at the hearing that these plants UVM intends to remove in order to plant trees such as those in Exhibit 4. I encourage you to stop at the property to really see where this fence will go and how it will impact existing vegetation.

12. UVM made promises to an 82 year old Harriet Adams and her family, and to the Burlington Planning Commission that it would take some reasonable steps to help mitigate the nuisance of Redstone Apartments on Harriet Adams. Other than installing the fence, they did not keep those promises. The light they promised to move further away from the house now sits closer than the plat allows, they did not install additional vegetative screening or even maintain the existing screening. (Exhibit 24)

13. In deposition, Linda Seavey answered the question if the trees Redstone planted "give an established feel to the project" by stating: "I think it's [the question] a little irrelevant, because you're reading from a permit condition that wasn't this installation that you requested, so I think it's difficult to say. I think they probably will, when they grow, but – *and you have a fence there, which is a different situation, which is much more buffer than a hedge would be*" (emphasis added) (Exhibit 25, page 2).

UVM is now seeking to move this buffer. Allowing the student 10' closer to our home will exacerbate an already bad problem with student behavior effecting our sleep and enjoyment of our home. Moving the fence will remove any buffer it offers.

14. In an email on June 27, 2012 Mr. Collins wrote that "UVM would agree to a landscape buffer agreement to maintain the [additional] plantings which would be on UVM property, and the landscape buffer would remain in effect during your/your wife's ownership of the property....UVM would agree to leave the existing fence north of your property line in place pursuant to an annual license that could be terminated by UVM on 90 days prior written warning." (Exhibit 26)

The fence location became a problem for UVM not because they needed to comply with a court order,

not because of plowing and salting problems, and not because the trees were not thriving, but because in early July, I appealed the DRB decision not to place any limits on evening use of the Virtue Field Stadium. UVM then revoked their offer and went to court. Their desire to move the fence is motivated by retribution. Again, UVM applied for the permit the day following the environmental court decision on Virtue Field, not after Judge Crawford's decision in March.

15. Judge Crawford's decision was in March, UVM applied to move the fence in July. They applied for their permit not a day or a week or a month after the Crawford's order but on July 9th—one day after Judge Walsh announced his decision on our appeal of the Virtue Field DRB decision. This is not about the health of the trees or of UVM trying to be a good neighbor, but of putting up a big middle-finger 12' from our home.

Again, since the pictures don't capture everything, I'd ask that you stop by and take a look at the fence, and the property on both sides of the fence. Moving the fence will exacerbate an already bad problem: it will entail removing trees and shrubs that are screening the Apartments, it will move the students and their trash and noise (and on occasion urine and vomit) 10' closer to our house.

Thanks.

Pike Porter

State of Vermont
Chittenden County, SS.

Subj: 1
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OCT 25 2013

Pike Porter)
Ashley Adams)
Plaintiff,)
v.)
University of Vermont)
Defendant.)

Chittenden Superior Court

Docket No. S947-11 Cnc

DEPARTMENT OF
PLANNING & ZONING
VERMONT SUPERIOR COURT

FEB 15 2013

Chittenden Unit

MOTION TO DISMISS WITHOUT PREJUDICE

Whereas the Court has deemed Chittenden Superior Court the improper venue for addressing Vermont Environmental Board, Act 250, and Burlington Zoning Board and Planning Commission decisions;

Plaintiffs hereby request the court dismiss without prejudice counts 33-37:

33. UVM has expanded parking areas at Redstone Apartments inconsistent with plans and conditions approved by Burlington Zoning Board and the Burlington Planning Commission, VEB, and DEC, and has thus contravened city and state permit conditions as well as Judge Bryan's 1992 order.

34. UVM has modified storm water catch basins and landscape grading plans inconsistent with plans and conditions approved by Burlington Zoning Board and Burlington Planning Commission, VEB and DEC and has thus contravened city and state permit conditions and Judge Bryan's 1992 order.

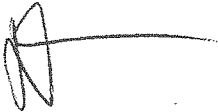
35. UVM has installed or moved parking lot lights inconsistent with plans and conditions approved by Burlington Zoning Board and Burlington Planning Commission, VEB and DEC, and has thus contravened city and state permit conditions as well as Judge Bryan's 1992 order.

36. UVM has failed to screen dumpster and recycling areas consistent with plans and conditions approved by Burlington Zoning Board and Burlington Planning Commission, VEB, and DEC, and has thus contravened city and state permit conditions as well as Judge Bryan's 1992 order.

37. UVM has failed to provide 24 hour police patrols of areas adjoining Redstone Apartments consistent with plans and conditions approved by Burlington Zoning Board and Burlington Planning Commission, VEB, and DEC, and has thus contravened city and state permit conditions as well as Judge Bryan's 1992 order.



Ashley Adams – Plaintiff Dated in Burlington, Vermont on February 15, 2013



Pike Porter – Plaintiff Dated in Burlington, Vermont on February 15, 2013

544 South Prospect Street
Burlington, VT 05401

802.233.2600

pikeporter@gmail.com

VERMONT SUPERIOR COURT

FEB 22 2013

Chittenden Unit

So ordered
2/15/13



Exhibit 2

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Findings of Fact and Conclusions
of Law and Order
#4C0895
Page 5

DEPARTMENT OF
PLANNING & ZONING

include an outlet device to control peak flows at the 10-year storm and all lesser storms. These stormwater management facilities will reduce the peak flow from the South Campus to approximately 25 CFS, an overall reduction of approximately 47 percent. Both detention ponds will be fenced. (Exhibit #6 and testimony of applicant)

11. A Draft Discharge Permit has been issued, which the Commission accepts as evidence that the project complies with applicable Department of Environmental Conservation Regulations. (Exhibit #85)
12. The Burlington Country Club (BCC) owns land immediately to the south of the project and the proposed stormwater management facilities. The discharge from the two stormwater ponds will flow through a rip-rap pad and then directly onto BCC land and eventually through a 15 inch culvert under a portion of the golf course. (Testimony of applicant and Exhibit #38)
13. The 15-inch drainage pipe is inadequate to handle current peak flows from the University Campus. Even though the stormwater management facilities proposed by the University will reduce peak flows, the pipe will still be inadequate to handle the reduced flows from the University's property. Because of this, the Country Club has requested that the University replace the 15-inch drainage pipe with a 30-inch pipe.
14. The Commission finds that since this project will not increase the discharge of stormwater onto the Country Club property, there is no justification for requiring the installation of the 30" pipe requested by the Country Club.
15. The University has a no-salt policy, which will be followed by the owner of the apartment complex, Novarr-MacKesey. Sand will be used on roads, parking and walks for pedestrian/vehicular safety. Salt may be used in extreme weather conditions only if pedestrian and vehicular safety cannot be assured using sand alone. (Testimony of applicant)
16. During the winter months, snow will be piled in the areas of catch basins that will drain to the stormwater management facilities. In the event of excessive snow piles, snow will be trucked away from the project site.

Exhibit 3

The University of Vermont

DEPARTMENT OF SECURITY SERVICES
590 MAIN STREET
BURLINGTON, VERMONT 05405-0048
TEL. (802) 656-2027



May 23, 1990

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DEPARTMENT OF
PLANNING & ZONING

Linda Seavey
Senior Executive Assistant
Administrative and Facilities Services
109 So. Prospect Street

RE: South Prospect Street Housing

Dear Ms. Seavey:

I have reviewed the above project from both a security and safety perspective involving lighting, fencing, landscaping, traffic movement, lock systems and controls:

LIGHTING: The perimeter lighting scheme as well as the facility lights are more than adequate for both vehicular movement and pedestrian safety. Each system overlaps the other in all the critical areas. The designer should be commended for the lighting plan.

FENCING: This physical barrier between the wooded area and the parking lot is an excellent safety measure. The proposed landscaping should not be an impediment for the tenants safety. Periodic maintenance to control growth should be addressed with the owners.

TRAFFIC MOVEMENT: The concept to provide two direct means of access to the area (from a UVM Lot and So. Prospect Street) will improve the ability of both UVM and Burlington Police to provide regular patrols in this area.

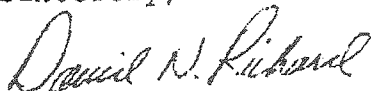
LOCK SYSTEMS/CONTROLS: The proposed lock systems are acceptable within the industry standards for this complex. The locking of common areas is an excellent idea.

Chief Kevin Scully and I have reviewed these plans and we both concur that the security and safety issues of concern to us have been addressed with lighting exceeding our expectations.

My expertise in these matters has evolved through 11 years as Director of Security Services at UVM and ten additional years in the law enforcement field. I have also consulted on related issues for the University of Maine, Bryant College, Hamilton College and St. Mary's College of Maryland.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "David N. Richard".

David N. Richard
Director
Security Services

c: Kevin Scully, Chief of Police

DNR/md

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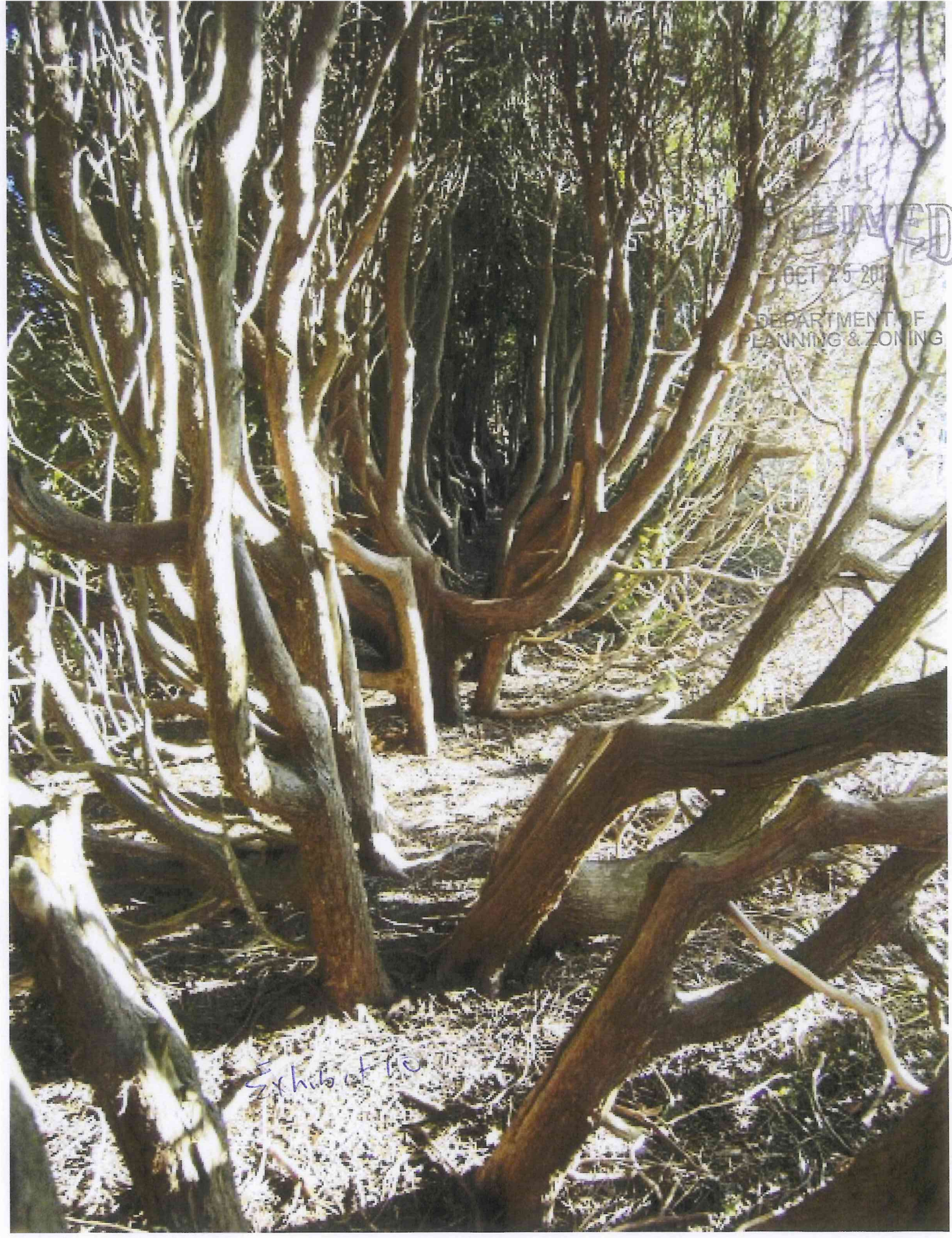
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Exhibit 10

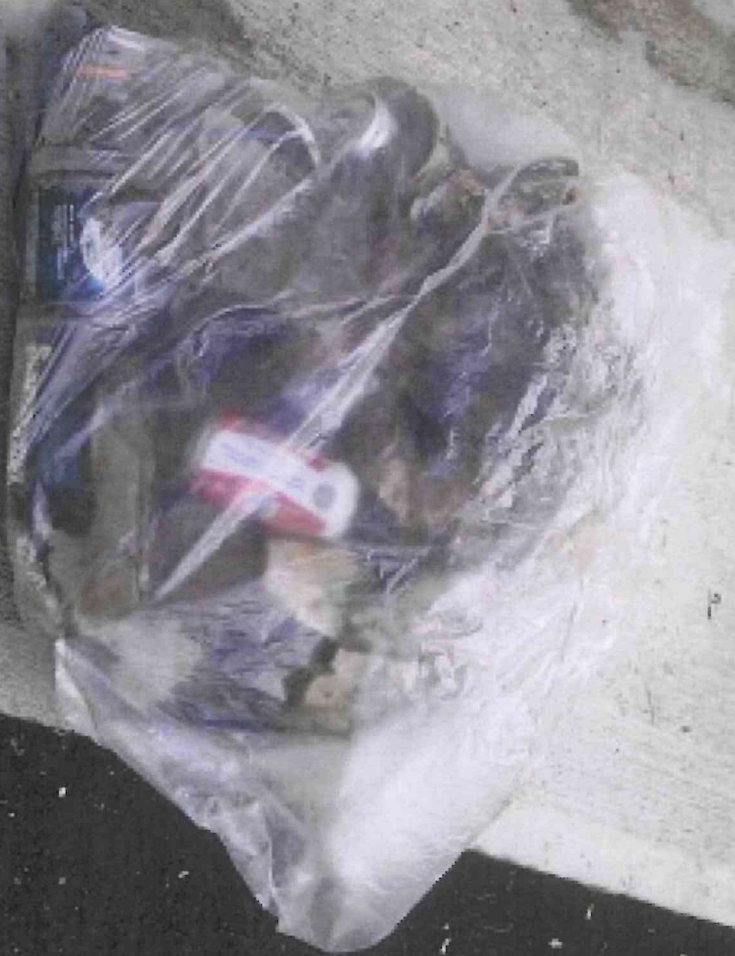


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Exhibit 15

8-30-91

544 So. Prospect St.
Salt Lake City, UT 84101

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To Whom It May Concern:

In regard to 544 So. Prospect St.

I am a member of Citizens for Responsible Planning. I authorize the Steering Committee of CFRP and our Attorney, Harvey Carter to represent me in this matter.

We bought this lot in 1955. My husband, Harry, drew the plans and designed the house we wanted. Rene Berard, Contractor built it. We moved in July, 1957.

It was a perfect place for kids activities. We enjoyed the woods in back of us. The traffic was light. Julian Clark, our neighbor across the street, had a large apple orchard and raised pheasants. We always loved it here.

My husband died a year ago last May. The property is left to me and will go into Trust when I go. We have owned everything jointly since we were married. Clark Gravel was our lawyer and is my Attorney. I assure you everything is in

order as we wanted when we made our Wills.

I have looked forward to leaving this property to my family. We have two sons, George and Paul. I have one granddaughter, Ashley Adams, a junior, this year at Smith College.

This project, next door, will alter the character of the neighborhood aesthetically. The noise and traffic will spoil this quiet residential area we have known.

Specifically, I have two problems.

1. The drainage
We are higher than the adjacent field. My husband had many loads of fill and many loads of top soil brought in when our house was built. We are not plagued with a wet yard until the bottom of the slope, in the back. It is very wet in the flat area going into the Country Club woods. After a rain, beyond and through the hedgerow, north of us, there is a pond. What will happen when all this excavation takes place?

2. The Sewer Line

A new water line was ~~put~~ down the street before Overlake was constructed. We do have plenty of water and pressure at this time.

The Department of Public Works come and pump out the manhole across the street from me, periodically.

My husband was an Engineer. He would know whether it's the same old sewer line going down this street. It concerns me to add all these people when sometimes it takes two flushes to clear a toilet.

The situation is unfortunate but I still love my house, as do my family, and would not want to live elsewhere.

Sincerely

Harriet S. Adams

Vermont
Green Mountain State
CCP 756

WATER FROM ABOVE

EXHIBIT 16

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Sketch 18 - These trees would be removed.

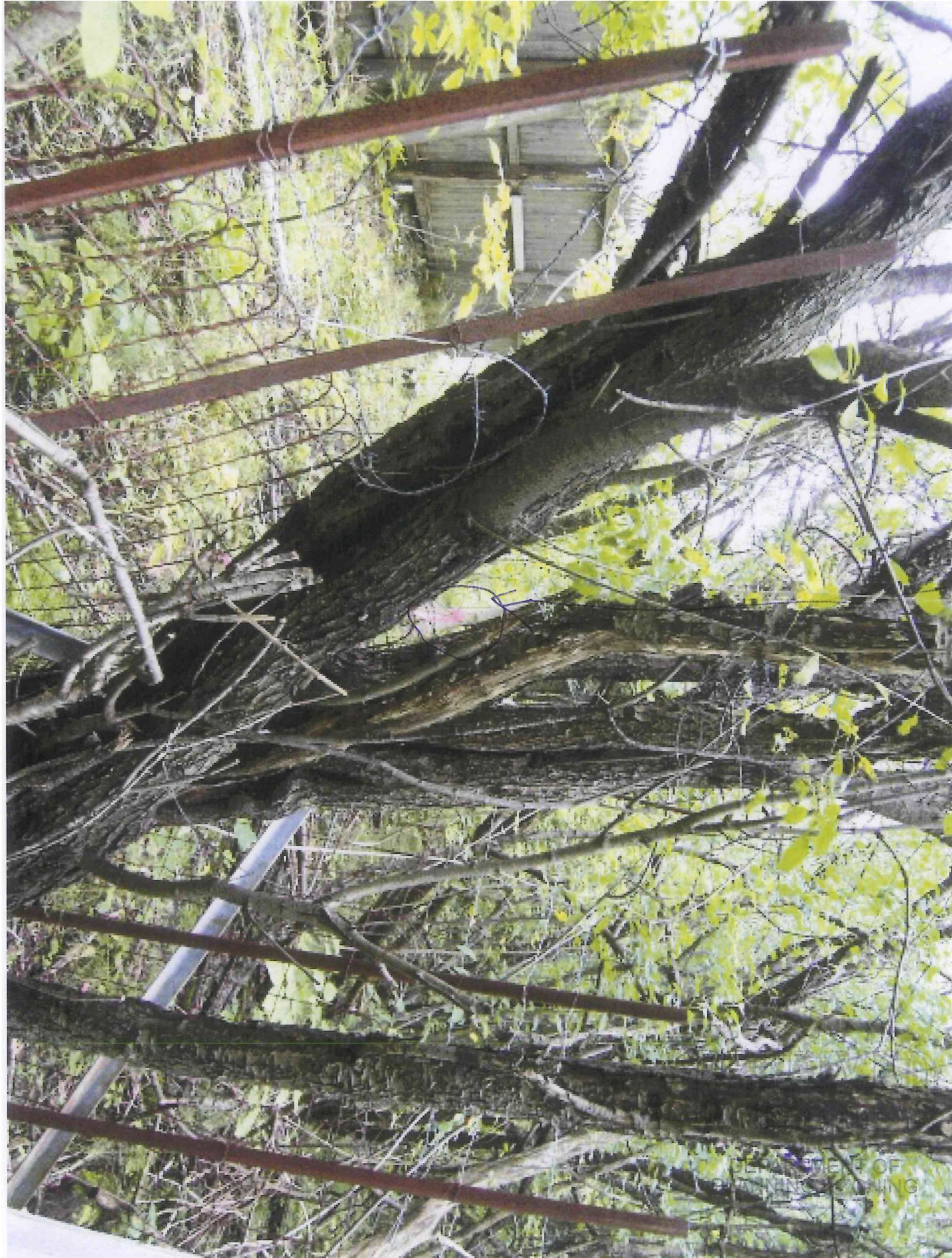


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There is not appreciable increase in traffic from this project, therefore a delay in the issuance of a Certificate of Occupancy on the basis of traffic concerns is unwarranted.

See Attached Comments On Management

FROM: Planning Commission Notes
May 24, 1990

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"Howard Allen, South Prospect Street and member of Burlington Country Club, stated the Burlington Country Club Board has not approved the drainage plan as mentioned by the developers as of this afternoon."

"Walter Adams expressed concern with drainage, noise and invasion of privacy."

ISSUE #1, DRAINAGE:

There have been several meetings between Novarr-Mackesey, UVM and the Burlington Country Club to discuss issues and approaches to solving an already problematic drainage situation. Gary Sweeney has also been meeting with Burlington Country Club Engineers and the project has been reviewed by their Course Architect. At present, the Country Club is in agreement in principal with the approach. Work is being done on final layout and details. A letter from Fred Auletta representing the Country Club, has been written and will be sent to the Planning Commission shortly.

ISSUE #2, NOISE AND INVASION OF PRIVACY:

Considerable effort has been made to shield Mr. Adams sister-in-law's house including: a solid wood fence, additional screening and moving sharp cut off light forward away from the house and retaining existing screening vegetation along the southern border of the project.

Exhibit 25

1 range of shade trees, flowering trees, evergreen hedges
2 and shrubs will be used to give an established feel to
3 the project." I'm going to present you with some
4 pictures of the site as it appears today or recently.

5 A. Okay.

6 Q. These are some arborvitae trees that Redstone
7 Development Group --

8 A. Right.

9 Q. -- had planted.

10 A. Um-hum.

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11 MR. COLLINS: Not to interrupt, but if we
12 can mark them again? It keeps the record a little --

13 MR. PORTER: Sure.

14 MR. COLLINS: -- more readable.

15 MR. PORTER: I'm going to pass that on
16 to -- responsibility along.

17 (Deposition Exhibit No. 1 was marked for
18 identification.)

19 Q. In your professional capacity, do you believe
20 these trees give an established feel to the project?

21 MR. COLLINS: Object to the form. If you
22 can answer it.

23 A. Well, these trees are the trees that Redstone
24 recently installed per you.

25 Q. Correct.

1 A. The property -- the university's property goes
2 beyond those trees and that fence, so without seeing
3 that, and there's also other hedges on the property. So
4 unless you're being specific about --

5 Q. I'm being specific to these trees in the
6 picture.

7 A. Because the permit condition was specific to
8 the site plan in general and not to the south
9 boundary.

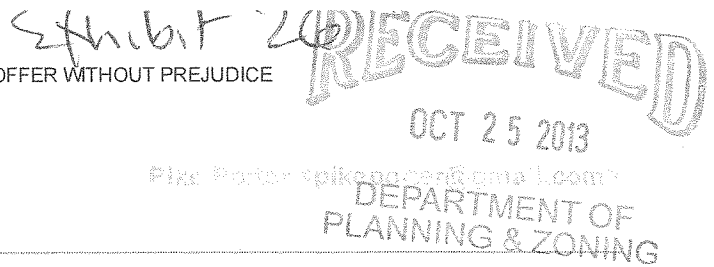
10 Q. Okay.

11 A. So --

12 Q. These trees in the picture, would you -- do
13 you believe they give an established feel to the
14 project?

15 A. I think it's a little irrelevant, because
16 you're reading from a permit condition that wasn't this
17 current installation that you requested, so I think it's
18 difficult to say. I think they probably will, when they
19 grow, but -- and you do have a fence there, which is a
20 different situation, which is much more buffer than a
21 hedge would be.

22 Q. I'm reading now from the Burlington Planning
23 Commission Conditions of Approval Final Plat. It was
24 approved April 25th, 1991, and modified May 9th, '91.
25 And it reads, "Project approved as presented subject to

**RE: UVM - SETTLEMENT OFFER WITHOUT PREJUDICE**

John Collins <jcollins@v-law.org>
To: pike porter <pike@castleporter.com>

Wed, Jun 27, 2012 at 9:51 AM

Pike – UVM is prepared to offer you \$12,000 (payable to Horsfords) in exchange for a general release, assuming Horsfords installs the berm and the landscaping – the berm would have to be installed in accordance with the plan prepared by our stormwater consultant which we previously provided. Horsfords would have to provide proof of insurance acceptable to UVM before commencing the work. UVM would agree to a landscape buffer agreement to maintain the plantings which would be on UVM property, and the landscape buffer would remain in effect during your/your wife's ownership of the property. We would need to see and approve the landscape plan since the plantings will be on UVM property and we will be maintaining them. UVM would agree to leave the existing fence north of your property line in place pursuant to an annual license that could be terminated by UVM on 90 days prior written notice. We checked with police services and they cannot commit to the police patrols you are requesting. However, they do patrol the entire campus on a daily basis which does include Redstone apartments. Let me know if this offer is acceptable to you. If not, let me know when you and Ashley are available for depositions and please provide dates when you are available to take the UVM depositions you requested with alternate dates. Thanks. John

From: pikeporter@gmail.com [mailto:pikeporter@gmail.com] **On Behalf Of** pike porter
Sent: Wednesday, June 20, 2012 4:24 PM
To: John Collins
Subject: Re: UVM

Hi John,

you have indeed heard from me; I've left two messages at your office this week but have received no return call.

Horsfords has provided a planting schedule that will work for Ashley and me at cost of about \$13,500. Because this includes installing the berm and because Redstone has already agreed to install the berm at their cost, this amount might be acceptable to UVM. I need to know how much Redstone planned to pay for the berm and if they are agreeable to have Horsfords install it when planting their trees.

I have received no word about police patrols at Redstone Apartments. We need the students living at Redstone Apartments to know that the police are patrolling because this is an effective way of keeping down noise. If we cannot agree on this and police patrols are not a part of the noise reduction plan, there is really no sense in compromising on other noise reduction measures.

Please call in the morning, 802.233.2600.

Pike Porter, Realtor
Castle Porter Real Estate

544 South Prospect Street

Burlington Vermont 05401
802.233.2600

On Wed, Jun 20, 2012 at 3:28 PM, John Collins <jcollins@vt-law.org> wrote:

Pike – I hope all is well. We are approaching the end of the month and I have not heard from you – we would like to resolve this if possible. I attach new notice of depositions. I AM FLEXIBLE ON TIME AND DATE AND WE DO NOT NEED TO TAKE THE DEPOSITIONS IF WE SETTLE THE CASE. Please contact me at your earliest convenience to discuss where we are. Thanks. John

Exhibit 27

b) Demonstrate that the project's visual appearance from a highway, community center, or nearby residences is consistent with the visual appearance of the existing area as described in a) above:

- i) Demonstrate that the project use (residential, retail, industrial, etc.) is consistent with the existing or planned land uses in the area. Will the project generate any significant noise related impacts during and/or after construction? If so, what mitigation efforts are being proposed.

The project is located in the University Campus (UC) zone and consists of student apartment buildings consistent with residential uses to the north on University property and with multi-unit housing complexes, both private apartments and condominiums located to the west of the project site across South Prospect Street.

Construction techniques will produce noise typical for this type of development. Hours of construction will not exceed 7:30 a.m. to 4:30 p.m., Monday through Friday. Construction site is located more than 100 feet from other buildings

- ii) Demonstrate that the building size, density, and location are not out of character with the terrain of the site, the size of nearby buildings, surrounding vegetation, and nearby scenic vistas from highways or community centers. (Show details on site plan.)

The project is designed to conform in building size, density, and design to the existing surroundings. The buildings are a mixture of flats and duplexes in three story structures. The three buildings fronting South Prospect Street are smaller to relate to the scale of the residential neighborhood. Rooflines, massing, and materials recall the older architecture of the adjacent Redstone Campus. The larger buildings, facing the University Campus, respond to the Wing-Davis-Wilkes residence complex to the north. A range of shade trees, flowering trees, evergreen hedges and shrubs, will be used to help the project feel like a well established part of the neighborhood. Norway Maples will be planted along South Prospect Street. Honey Locust and flowering crab trees will add color throughout the site.

The project has received City of Burlington Design Review and Planning Commission approval.

- iii) Demonstrate that the architectural style and building materials and colors are not out of character with the style of area buildings (provide drawings of building).

Reference attached Building Elevations. The project has received City of Burlington Design Review and Planning Commission approval. Reference Criterion 8 (b) above, and building elevation specifying materials and color in "Supporting Documents".

- iv) Demonstrate that parking areas are designed to minimize their visibility from the highway or nearby residences. (Show on site plan.)

Reference Site Plan with regard to Elevations and Landscape Plan. An evergreen arborvitae hedge screens the parking area located at the southern edge of the property.

- v) Demonstrate that any project signs are designed to minimize their visual impact on the surrounding area (include size, illumination, and colors). (Show location on site plan.)

Reference Site Plan for main entrance signage. Exterior building materials are as follows: stained wood siding, clapboard shingles, other wood accent trims, bronzetone aluminum clad wood windows, painted metal

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